

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE: Martina M. Schmitt

Bankruptcy No. 18-11016
Chapter 13

Debtor

MOTION TO DISMISS

NOW COMES the United States of America, through the Internal Revenue Service (IRS), by counsel, Grant C. Jaquith, United States Attorney for the Northern District of New York, Cathleen B. Clark, Assistant United States Attorney, of counsel, and moves the Court pursuant to 11 U.S.C. §§ 1307(e) and 1308(a) to dismiss this case. In support of this motion, the following is submitted.

A. FACTUAL BACKGROUND

1. The Debtor filed a Chapter 13 Petition and Plan on June 7, 2018. *See* Dkt. Nos. 1 and 2.
2. According to the docket, the first meeting of creditors was scheduled to be held on July 23, 2018, in Albany, New York. *See* Dkt. No. 8.
3. Upon information and belief, on or about July 26, 2018, the IRS issued a Letter 1714 to debtor's counsel and to the Chapter 13 Trustee regarding the unfiled returns for tax years 2010, 2011, 2012, 2013, and 2014. Upon information and belief, the IRS received no response to this notice.
4. On or about July 27, 2018, the IRS filed a proof of claim (POC) in the estimated amount of \$48,202.78 all of which was scheduled as unsecured. At the time the IRS filed its POC, debtor had not filed her Form 1040s for tax years 2010, 2011, 2012, 2013, and 2014. *See* Claim

No. 1-1.

5. On May 20, 2019, the IRS filed an Objection to the Debtor's Plan on the basis that, the Debtor failed to file her Form 1040 tax returns for 2010, 2011, 2012, 2013, and 2014 as required by 11 U.S.C. § 1308(a). *See* Dkt. No. 68. As noted above, as of this date, Debtor still has not filed her Form 1040 tax returns for 2010, 2011, 2012, 2013, and 2014.

B. LAW

Section 1307(e) of the Bankruptcy Code provides that:

Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.

Section 1308(a) of the Bankruptcy Code provides that:

Not later than the day before the day on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

As set forth above, the Debtor was required to file her outstanding Form 1040 for 2010, 2011, 2012, 2013, and 2014, no later than July 22, 2018. The Debtor has enjoyed the protections of Chapter 13, yet chose to ignore the requirements of the Internal Revenue Code to file her outstanding Form 1040s for 2010, 2011, 2012, 2013, and 2014, and the requirements of the Bankruptcy Code.

Because of the Debtor's failure to timely file her Form 1040 for 2010, 2011, 2012, 2013, and 2014, as required by the Bankruptcy Code – 11 U.S.C. §§ 1307(e) and 1308(a), dismissal of the Debtor's Chapter 13 case is mandatory. *In re Cushing*, 401 B.R. 528, 538 (1st Cir. BAP (Mass.) 2009); *In re Lachney*, 2014 WL 5339372 at * 2 (Bankr. W.D. La. 2014); *In re*

Broussard, 2009 WL 1531817 at *4 (Bankr. W.D. La. 2009); *In re Kuhar*, 391 B.R. 733, 739 (Bankr. E.D. Pa. 2008); *In re Cordova*, 2007 WL 2077633 at *4 (Bankr. D.N.M. 2007); and *In re Forte*, 2007 WL 2028894 at *5 (Bankr. E.D.Pa. 2007). This is so even if the Debtor files a return after the meeting of creditors has closed. *In re McCluney*, 2007 WL 2219112 at *5 (Bankr. D. Kan. 2007).

WHEREFORE, for the forgoing reasons, the Internal Revenue Service respectfully requests that the Debtor's Chapter 13 case be dismissed.

Dated: November 6, 2019

Respectfully submitted,

GRANT C. JAQUITH
United States Attorney

By: /s/Cathleen B. Clark
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